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UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NEW YORK

**FILED**  
 IN CLERK'S OFFICE  
 U.S. DISTRICT COURT E.D.N.Y.  
 ★ AUG 13 2012 ★  
 LONG ISLAND OFFICE

**FILED**  
 CLERK  
 2012 AUG 13 PM 2:30  
 U.S. DISTRICT COURT  
 EASTERN DISTRICT  
 OF NEW YORK  
 4023

CV 12

MARC A. STARR,

Plaintiff,

\_\_\_ Civ. \_\_\_ (\_\_\_)

- against -

FIRSTMARK CORP.,

Defendant

**FEUERSTEIN, J.**

**TOMLINSON, M.**

**ORDER TO SHOW CAUSE  
 FOR AN ORDER GRANTING  
 A PRELIMINARY  
 INJUNCTION AND  
 TEMPORARY  
 RESTRAINING ORDER**

Upon the annexed Affidavit of Marc A. Starr ("Starr"), sworn to on August 10, 2012, and the exhibits attached thereto, the annexed Affidavit of Meryl E. Wiener, sworn to on August 13, 2012, the summons and complaint and the accompanying memorandum of law, dated August 13, 2012,

IT IS HEREBY ORDERED that defendant Firstmark Corp. ("Defendant") show cause on the 3<sup>rd</sup> day of September 2012 at 11:15 a.m., or as soon thereafter as counsel can be heard, at the United States Courthouse located at 225 Cadman Plaza East, Brooklyn, NY 11201, in Courtroom 920 before the Honorable Sandra Feuerstein, Judge of the United States District Court for the Eastern District of New York, why an order should not be entered pursuant to Fed. R. Civ. P. 65, preliminarily enjoining Defendant from enforcing an arbitration provision in a stock purchase agreement dated as of March 4, 2011 (the "SPA"), which

Defendant previously breached by failing to deliver to Plaintiff Starr a post-closing financial statement prepared in good faith pursuant to the accounting methodology agreed to by the parties and in accordance with generally accepted accounting principles ("GAAP"), where (A) Plaintiff Starr alleges Defendant deliberately misstated the post-closing financial statement for the sole and improper purpose of depriving Plaintiff Starr of post-closing earn out compensation in the amount of as much as \$3.8 million; and (B) the arbitration provision (i) requires Plaintiff Starr to submit to Defendant by August 14, 2012 notice of dispute with respect to the post-closing financial statement that Plaintiff Starr alleges Defendant misstated; (ii) limits the grounds on which Plaintiff Starr may dispute the post-closing financial statement to the sole issue of whether it was prepared in accordance with GAAP and does not address other issues of dispute between the parties; and (iii) requires the parties to the SPA to submit such dispute to a sole accountant whose decision would not be subject to judicial review; and

~~IT APPEARING that temporary relief is necessary to prevent immediate and irreparable harm pending the hearing and determination of Plaintiff Starr's order to show cause for a preliminary injunction, and it appearing that, without such relief, Plaintiff Starr will suffer irreparable harm as he otherwise would be required to participate in an arbitration process, it is~~

~~ORDERED that pending the hearing on this application, the SPA is stayed and Defendant, its officers, agents, servants, employees and all persons acting in concert or participation with them shall be enjoined and restrained from enforcing an arbitration provision in the SPA that, among other things, requires Plaintiff Starr to submit a notice of dispute with respect to a post-closing financial statement by August 14, 2012; and it is further~~

ORDERED that pending the hearing on this application, a copy of this order together with the papers on which it is based be served by overnight delivery on Defendant at P.O. Box 29669, Richmond, VA 23113, Attn: H. William Coogan, Jr., with a copy to its attorneys, Troutman Sanders LLP at 1001 Haxall Point, P.O. Box 1122, Richmond, VA 23218-1122, Attn:

Thomas A. Grant on or before August 14, 2012, and that such shall be deemed good and sufficient service of this order, and all proceedings and hearings relating thereto; and it is further

ORDERED that answering papers, if any, be served on or before August 24, 2012, and any  
by overnight delivery service or electronic delivery on Katten Muchin Rosenman LLP, 575 replied by  
Madison Avenue, New York, NY 10022, Attn: Meryl E. Wiener or August  
meryl.wiener@kattenlaw.com, and that such shall be deemed good and sufficient service. 31/2012

8/13/12

ENTER

S/Bianco  
U.S.D.J.